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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,796	12/20/2001	Mark S. Franke	KCC-16,487	9402

35844 7590 12/28/2004  
PAULEY PETERSEN & ERICKSON  
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EXAMINER

REICHLE, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/027,796	FRANKE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Karin M. Reichle	3761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-8,13,15-18,38 and 39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-8,13,15-18,38 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5-17-04&10-7-04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Specification***

#### ***Drawings***

1. The drawings were received on 5-17-04(Figures 1-5 and 7) and 10-7-04(Figures 6A-6B and 8-10). These drawings are approved by the Examiner.

### ***Claim Language Interpretation***

2. “Bonded” and “connected” are defined as set forth on page 5, lines 16 et seq. and page 6, lines 1-2. It is specifically noted that “bonded” and “connected” refers to both bonding and connecting which is direct and that which is indirect and that which is permanent or not permanent. “Disposable” is defined as set forth on page 6, lines 7-8. “Ribbon cover” is defined as set forth on page 11, lines 10-12. “Elastic” is defined as set forth on page 6, lines 10-14. “Disposable article”, “absorbent garment”, and “personal care garment” are defined as set forth on page 13, line 19-page 14, line 1. The terminology “side seam” is defined on page 11, lines 17-19.

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 15 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Chupa ‘123.

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With regard to claims 15 and 18: See Claim Language Interpretation section supra, title, abstract, Figures 1-3, and 9-13, col. 1, lines 47-56, col. 2, lines 50-60, col. 3, lines 5-43, col. 4, line 26-col. 5, line 50, col. 5, line 65-col. 6, line 43, i.e. garment is 10, front region adjacent the numeral 10 in the front, rear region is adjacent numeral 10 in the rear, the crotch region is therebetween, side panels are adjacent 30, 32, side seams are 12, 18, 36, 38, ribbon cover is 214 or 216 or both. Attention is again directed to the claim language interpretation section supra, i.e. “bonded” can be direct or indirect and permanent or not permanent, i.e. the ribbon cover(s) are bonded directly or indirectly to every other portion of the garment. It is also noted that the claims do not require the or each ribbon cover cover the entire side seam and only extend from the waist opening to the leg opening, i.e. can’t be longer than the seam. The ribbon covers are at least about ½ inch in the width dimension, i.e. at least about 12.7 mm, and the seams are about ½ inch in the width dimension, i.e. about 12.7 mm, and thereby the ribbon cover extends beyond a side edge of the side seam at least about 0 mm, i.e. includes 2 mm and 0 mm to 15mm. With regard to the language “garment” in the preamble see the cited portions of Chupa. With regard to the preamble, see col. 5, lines 23-32, i.e. infers the remainder of the article alone or the bindings as well may be made of non-washable material, i.e. “disposable”.

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chupa ‘123 in view of Stopper et al ‘290.

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Applicants claim the panels and/or ribbon covers comprise an elastic material which Chupa does not explicitly teach. However see the portions cited supra which teach that the strips can be the same material as the garment and all can be disposable material and that the purpose of the garment is to provide a soft, non-irritating, appearance enhanced hospital care garment. See also Stopper et al at abstract, col. 1, lines 38-42, col. 2, lines 48-51, col. 3, lines 55-65, col. 8, lines 61-66, col. 10, lines 27-40, i.e. a highly elastic knit like composite having highly pleasing aesthetic and tactile properties for use in a disposable hospital care garment. To make the hospital care garment of Chupa from the highly elastic knit like composite, if not already, as taught by Stopper et al would be obvious to one of ordinary skill in the art in view of the recognition that such would provide an aesthetically pleasing and physically comfortable garment and the desirability of Chupa to provide a soft, non-irritating appearance enhanced garment.

7. Claims 2-8, 13 and 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clares UK '564 in view of Asahi PCT '220.

With regard to claims 5-6, 13, 38 and 39: See Claim Language Interpretation section supra, see Clares at title, abstract, Figures, page 1, lines 4-7 and 93 et seq and page 2, lines 65-67, i.e. garment, front region, rear region, crotch region and side panels are the waterproof trousers, edge portions are 11b and 12b, the inner surfaces are opposite 11a and 12a, the seam is between the edges and the stitch line 14, the folded portion of the edge portion is adjacent the arrow from 12 and the ribbon cover is portion 15 or 16. Attention is again directed to the claim language interpretation section supra, i.e. "bonded" can be direct or indirect, i.e. the ribbon cover(s) are bonded directly or indirectly to every other portion of the garment, e.g. the outer

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surfaces of the portions, and the side seam connects directly or indirectly every portion of the garment, e.g. the inner surfaces of the portions. It is also noted that the claims do not require the or each ribbon cover cover the entire side seam and only extend from the waist opening to the leg opening, i.e. can't be longer than the seam. With regard to the language "personal care garment" in the preamble see the cited portions of Clares. It is the Examiner's first position that the reference explicitly teaches a personal care garment in as much as that term has been defined. In any case, the Examiner's second position, the recitation "personal care" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Therefore the Clares reference clearly includes all the claimed structure except for 1) the seams being those of the side panels of the garment and 2) the specific width of the ribbon cover, i.e. the fusible portion. With respect to 1) the Clares reference clearly teaches that the seams as taught can be seams of waterproof trousers. Furthermore, it is well known that waterproof trousers include side panels with side seams. Therefore, to employ the seams as taught by Clares as the side seams of side panels of waterproof pants would have been obvious to one of ordinary skill in the art in view of the teachings of Clares and the known seams of waterproof trousers. With regard to 2), while Clares does not teach the dimensions of the fusible portion covering the seam, i.e. the ribbon cover, it does teach the fusible portion covers the seams of waterproof trousers and also bonds and seals the line of stitching and has a width.

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See also the English translation of '220, i.e. '679, at col. 8, lines 8-14, col. 5, lines 61-65 and paragraph bridging cols. 9-10, i.e. the fusible portion covering a seam of waterproof trousers which portion also bonds and seals the line of stitching has a width of 5mm to 20mm. Therefore to make the width of the Clares fusible portion, i.e. the width of 15 or 16, the width as taught by '220, i.e. 5mm to 20mm, (if not already) would be obvious, see *In re Siebentritt*, 54 CCPA 1083 (two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution no needed to render such substitution obvious).

With regard to claims 2-4: The claim terminology "about" allows some leeway from the dimension it modifies. As seen in the Figures, the width of the side seam, i.e. between the dashed stitching lines and the edges of 11 and 12 is about 1/2 of the width of 15 or 16 and as discussed supra the width of 15 or 16 is from 5mm to 20mm, see supra, i.e. the seam is from about 2.5 mm to about 10mm in width.

With regard to claims 7-8: The claim terminology "about" allows some leeway from the dimension it modifies. As seen in the Figures, 15 or 16 extends beyond the side edge of the seam, i.e. either 11b or 12b or to the right of dashed line 14, at least about 2mm or about 0mm to about 15mm, see discussion supra.

### ***Response to Arguments***

8. Applicants' remarks have been considered but are either deemed moot in that the issue discussed has not been reraised, i.e. the drawing and specification objections, the prior art rejections based on Blackburn and the prior art rejections of certain claims on Chupa, or are deemed not persuasive, i.e. the discussion of the claim amendments and remaining rejections on

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Chupa, for the reasons discussed supra. Specifically the arguments are narrower than the claim language which does not require permanent seams nor direct connections and bonding. The Examiner notes Applicants' interview request. After review of this action, if Applicants still desires an interview, Applicants' representative should personally contact the Examiner in order to set up such interview. It is noted that any future requests for interview should be made personally to the Examiner or under separate letter rather than in the remarks section of the response in order that such may be identified and addressed in a timely fashion, see MPEP 713.

### *Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other prior art cited teaches various seams and seam allowances.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.




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The amendments to the claims necessitated any new grounds of rejection.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
December 21, 2004